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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,319	07/06/2001	Priscilla M. Tramontana	PPC-800	6598

27777 7590 11/25/2002
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EXAMINER

DELACROIX MUIRHEI, CYBILLE

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 11/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/900,319

Applicant(s)

TRAMONTANA, PRISCILLA M.

Examiner

Cybille Delacroix-Muirheid

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-11 and 19-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-11 and 19-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9. 6) ☐ Other: _____

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DETAILED ACTION

1. The request for continued examination filed on Oct. 28, 2002 under 37 CFR 1.114 based on parent Application No. 09/900,319 is acceptable.

No new claims are added. No claims are cancelled.

Claims 6-11 and 19-23 are currently pending.

Information Disclosure Statement

Applicant's Information Disclosure Statement received Oct. 28, 2002 has been considered.

Please refer to Applicant's copy of the 1449 submitted herewith.

Claim Rejections - 35 USC § 112

2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 6 recites the limitation "the article" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claim 19 is rejected under 35 U.S.C. 102(a) as being anticipated by Bodiguel, WO 97/38738.

Bodiguel discloses the invention substantially as claimed. Specifically, Bodiguel teaches a sanitary pad for protection of adults (i.e. feminine napkins), wherein the sanitary pad contains an effective amount (.2 mg to about 20 g) of one or more antiseptics. The antiseptics may be natural antiseptics and are comprised of essential oils such as essential oils of lavender, lemon or geranium. Please see the abstract; page 1, lines 1-29; page 2, lines 14-15.

With respect to the intended use of the essential oil to provide an aroma and inhibit microbial growth, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, the sanitary napkins of Bodiguel containing effective amounts of essential oils as an antiseptic would be capable of providing an aroma as well as inhibit microbial growth.

Claim Rejections - 35 USC § 103

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 20-23 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodiguel, supra in view of Iyer et al., 5,939,050 and Romano et al., WO 97/25106.

Bodiguel as applied above. Additionally, Bodiguel discloses that the essential oils may be deposited on elements of the sanitary napkin that come into contact with the skin or mucous membranes. Please see page 4, lines 6-8.

Bodiguel does not specifically disclose the essential oils claimed by applicant (claim 20); however, the Examiner refers to (1) Iyer et al., which disclose antimicrobial compositions for use in wipes, cleaners, pharmaceuticals and oral hygiene products, the compositions comprising

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mixtures of essential oils such as rosemary oil, cedarwood oil, hinokitiol, etc. (please see col. 3, lines 11-52; col. 4, lines 61-65; and (2) Romano et al., which disclose liquid disinfecting compositions comprising an antimicrobial active of essential oil or mixtures thereof, wherein the actives are obtained from essential oils such as oil of thyme, lemon grass, lavender, citronella, eucalyptus, cedar, etc. Romano additionally discloses that the disinfecting compositions are not only effective as disinfectants but also have a pleasant scent (please see the abstract; page 6, line 24 to page 7, line 16.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sanitary napkins of Bodiguel to include the antimicrobial and aromatic essential oils disclosed by Iyer and Romano because Iyer and Romano suggest that such essential oils have a pleasant odor and are effective antimicrobials and one of ordinary skill in the art would reasonably expect the resulting sanitary napkins to have antiseptic/antimicrobial properties as well as to suppress or eliminate any malodors associated with the use of a sanitary napkin. Such a modification would have been motivated by the reasoned expectation that the resulting sanitary napkins, during use, would prevent unwanted microbial growth while simultaneously providing pleasant aromas.

With respect to the claimed concentration of essential oils (claims 22, 11), since the prior art establishes that pleasant aromas as well as antimicrobial activity are associated with the amount of essential oil present, it would have been obvious to one of ordinary skill in the art to further

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modify the sanitary napkins of the prior art to provide a concentration of essential oils sufficient to eliminate odors and provide antimicrobial activity.

Finally, Bodiguel, Iyer and Romano do not specifically disclose impregnating wrapping material or adhesives with the essential oils; however, absent evidence to the contrary, determining the location where the essential oil is contained in the sanitary napkin is obvious and well within the capability of the skilled artisan. One of ordinary skill in the art would be motivated to place the essential oils in an area that would provide for optimum antimicrobial activity and elimination of malodorous substances.

Conclusion

Claims 6-11 and 19-23 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cybille Delacroix-Muirheid whose telephone number is (703) 306-3227. The examiner can normally be reached on Tue-Fri from 8:30 to 6:00. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax phone number for this Group is (703) 308-4242.

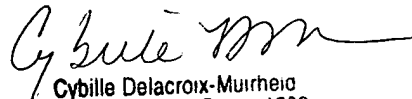
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

CDM



Nov. 18, 2002



Cybille Delacroix-Muirheid
Patent Examiner Group 1600